

Remarks

In an amendment filed on June 29, 2006, Applicants canceled claims 1-10, 15-2, and 32-29 and presented claims 39-59 for examination. In an Office Communication dated August 15, 2006, Examiner asserted that the amendment was non-responsive because the claims would have been subject to a restriction requirement had they been presented with the original claims in the application.

During an interview on September 5, 2006, Examiner clarified that this assertion was based on a hypothetical grouping of claims including Claim 1 in Group I, and Claim 39 in Group II. Applicants thank Examiner for providing this interview and address Examiner's written communication and interview comments below. The remarks below serve as Applicants' summary of relevant portions of this interview in accordance with MPEP §713.04. On the basis of the proposed amendments and remarks provided herein, Applicants respectfully request that Examiner enter the proposed claim amendments and promptly examine the claims in their amended form.

Under MPEP §803 (I), there are two criteria for a proper restriction requirement:

- The inventions must be “independent” or “distinct” as claimed; and
- There must be a “serious burden” on the examiner if restriction is not required.

Applicants respectfully assert that restriction is improper because Examiner cannot meet his burden of showing that the two proposed claims groupings are distinct.¹ The table below reproduces original claim 1 as well as proposed restricted claim 39. Independent claims 47 and 55 include limitations similar to claim 39. As shown, these claims are related, collectively reciting each of the significant limitations of original Claim 1, including:

receive item data from a seller;
receive sale data from the seller; and
store the received item and the received sale data in a data repository.

¹ Examiner conceded during the telephone interview that the basis of his restriction requirement was not that the inventions are “independent.”

Proposed Group I	Proposed Group II
<p>1. A system for aggregating demand in group-buying sales conducted across an electronic network, comprising:</p> <p style="padding-left: 40px;">a computerized facility configured to conduct group-buying sales operably coupled to the electronic network, the computerized facility including specification software executable on the computerized facility and configured to:</p> <p style="padding-left: 80px;"><u>receive</u> item data from a seller that defines a featured item for a first group-buying sale, wherein the seller transmits the data over the electronic network to the computerized facility;</p> <p style="padding-left: 80px;"><u>receive</u> sale data from the seller that provides the seller's directions for the first group-buying sale, wherein the seller transmits the data over the electronic network to the computerized facility; and</p> <p style="padding-left: 80px;"><u>store</u> the received item data and the received sale data in a data repository, wherein the computerized facility uses the received sale data in conducting the first group-buying sale of the featured item defined by the received item data.</p>	<p>39. A computer implemented method for providing information from a seller about an on-line group buying sale hosted by a sales server to a referring website for referring potential buyers to the on-line group buying sale, the method comprising:</p> <p style="padding-left: 40px;"><u>receiving</u> from the seller, information about a plurality of on-line group buying sales, the information comprising a description of an item for sale in a on-line group sale;</p> <p style="padding-left: 40px;"><u>receiving</u> from the seller, instructions for conducting the plurality of on-line group buying sales;</p> <p style="padding-left: 40px;"><u>storing</u> the information and instructions received from the seller in a memory;</p> <p style="padding-left: 40px;">receiving from the referring website, instructions for selecting an on-line group buying sale from the plurality of on-line group buying sales for the referring website;</p> <p style="padding-left: 40px;">receiving from the referring website, a request for information about an on-line group buying sale;</p> <p style="padding-left: 40px;">responsive to the request for information, the instructions for conducting the on-line group buying sales, and the instructions for selecting an on-line group buying sale, selecting for the referring website an on-line group buying sale from the plurality of on-line group buying sales;</p> <p style="padding-left: 40px;">generating a display associated with the selected on-line group buying sale;</p> <p style="padding-left: 40px;">generating a link to the display; and</p> <p style="padding-left: 40px;">providing the link to the referring website, whereby a potential buyer accessing the referring website can access the link, and thereby access the display associated with the selected on-line group buying sale and participate in the selected on-line group buying sale.</p>

While claim 39 includes additional elements, it recites versions of each of these elements of claim 1. Where a combination (e.g. claim 39) sets forth the details of the sub-combination (e.g. claim 1) as in this case, the inventions are not distinct and a restriction requirement is

improper. (MPEP 806.05(c) I) Furthermore, the pending claims of the two groups are not directed to distinct inventions, but rather are different definitions of the same disclosed subject matter, varying in breadth and scope of definition. (MPEP 806.03) For at least these reasons, the alleged restriction requirement would be improper.

These arguments are applicable with equal force to the proposed restriction of the pending claims and other groupings of original claims including a grouping including claim 32. This claim recites two elements:

receiving in a featured item description component a seller's description of a featured item to be sold in a first group-buying sale conducted on a computerized facility coupled to buyer computer systems over the electronic network; and
receiving in a sale parameter component the seller's instructions for the group-buying sale and providing the received instructions to the computerized facility.

Each of these elements has their parallel counterpart in claim 39. A restriction between the current claims and a grouping including claim 32 also likewise cannot be sustained.

Further, should the Examiner maintain the restriction requirement, he “must explain why there would be a serious burden on the examiner if restriction is not required.” (MPEP 808.02). Applicants respectfully submit that search and examination of all the claims in the application can be made without serious burden. The claim elements of the two groups identified by the Examiner are sufficiently similar that a search and examination of the claim elements from one group necessarily involve a search and examination of most claim elements of the other groups. Since the elements of the proposed independent claims were present in the original claims, the Examiner necessarily has (or should have) searched and examined their elements. The second criteria for restriction also cannot be sustained.

Applicants respectfully request prompt examination and allowance of the pending claims. In addition, in accordance with Applicants' interview with Examiner, Applicants respectfully request that Examiner contact the undersigned should Examiner believes it will help expedite furtherance of this application.

Respectfully Submitted,

Tom Van Horn, et al.

Date: Sept. 11, 2006

By: ____/Colleen V. Chien/____

Colleen V. Chien, Reg. No. 55,062
Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041
Phone: (415) 875-2319
Fax: (415) 281-1350

22930/06085/SF/5180016.1